

ACLU Foundation of Florida
4500 Biscayne Blvd., Suite 340
Miami, FL 33137



Randall C. Marshall
rmarshall@aclufl.org
Legal Director

T/786.363.2700
F/786.363.1108

Polk County School Board
Superintendent Dr. John A. Stewart
Attn: C. Wesley Bridges II, General Counsel
P.O. Box 391
Bartow, FL 33831

April 18, 2013

Via E-mail:
wes.bridges@polk-fl.net

Re: Kathleen High School Gay-Straight Alliance

Dear Sirs:

We represent two students at Kathleen High School, Rory Teal and Brenna Pellan, along with their respective mothers, Erin Armstrong and Jody Foley. Rory and Brenna wish to form a Gay-Straight Alliance (“GSA”) at Kathleen High School in order to confront bullying, educate the school community, and promote acceptance and equality for lesbian, gay, bisexual, and transgender (“LGBT”) students at Kathleen High School. To this end, they wish the GSA to be recognized as an official student club with all the attendant benefits afforded any other noncurricular student club. Despite their efforts, however, school officials have thus far not permitted them to form this club. We therefore request the Superintendent and the School Board’s assistance in reversing the school’s inaction and ensuring that the GSA is immediately approved as a student club.

As we understand it, Rory and Brenna initially proposed the club to Principal Ginger Rosenau, Assistant Principal Charles Thacker, and others in an e-mail on November 25, 2012. Despite Rory and Brenna’s numerous attempts to learn the status of their proposal, it was almost three months later – on February 22, 2013 – before they were told that additional information may be needed. This information was provided the following month, yet to date – almost five months after submitting the initial proposal – Rory and Brenna have still not obtained a definitive statement that the request to form the club has been approved or denied. On February 22 and April 3, 2013, Principal Rosenau suggested that the delay was due to the many club applications that had been filed and needed reviewing, yet our understanding is that only two club applications have been filed since July 2012. The school’s delay and non-response to the GSA’s club application amounts to a de facto denial.

Both the First Amendment of the U.S. Constitution and federal statutory law require that school officials treat GSAs the same as any other noncurricular clubs

at the school. As explained by the United States Department of Education, the Equal Access Act (20 U.S.C. §§ 4071-4074) guarantees students the right to form and participate in school clubs, with wide latitude given to the proposed content of their discussions.¹ Where schools have refused to allow GSAs to form or have otherwise denied these groups equal treatment, federal courts in Florida and across the country have repeatedly held them to be in violation of the law.²

Under the Equal Access Act, schools may not pick and choose among clubs based on what they think students should or should not discuss. If a public school allows any student group whose purpose is not directly related to the school's curriculum to meet on school grounds during lunch or before or after school, then it cannot deny other student groups the same access to the school because of the content of their proposed discussions. The Act specifically provides that a school cannot deny equal access to student clubs because of the "religious, political, philosophical, or other content of the speech at such meetings." 20 U.S.C. § 4071(a). Thus, school officials cannot prohibit a GSA because of their personal views about LGBT people or issues. As a federal judge concluded in one GSA case:

The Board Members may be uncomfortable about students discussing sexual orientation and how all students need to accept each other, whether gay or straight. . . . [But School Officials] cannot censor the students' speech to avoid discussions on campus that cause them discomfort or represent an unpopular viewpoint.

¹ See U.S. Dep't of Education Secretary Duncan's Letter to Colleagues Announcing Release of *Legal Guidelines Regarding the Equal Access Act and the Recognition of Student-Led Noncurricular Groups* (June 14, 2011), available at <http://www2.ed.gov/policy/elsec/guid/secletter/110607.html>; see also U.S. Dep't of Education, Legal Guidelines Regarding the Equal Access Act and the Recognition of Student-Led Noncurricular Groups, available at www2.ed.gov/policy/elsec/guid/secletter/groupsguide.doc.

² See *Gay-Straight Alliance of Yulee High Sch. v. Sch. Bd of Nassau Cnty.*, 602 F. Supp. 2d 1233 (M.D. Fla. 2009); *Gonzalez v. Sch. Bd. of Okeechobee Cnty.*, 571 F. Supp. 2d 1257 (S.D. Fla. 2008); see also Consent Decree & Order (DE 23), *Vanguard High Sch. GSA v. Yancey*, No. 5:12-cv-268 (M.D. Fla. Aug. 14, 2012); *Straights and Gays for Equality v. Osseo Area Schs.-Dist. No. 279*, 540 F.3d 911 (8th Cir. 2008); *White Cnty. High Sch. Peers Rising in Diverse Educ. v. White Cnty. Sch. Dist.*, No. 2:06-cv-29, 2006 WL 1991990 (N.D. Ga. July 14, 2006); *Boyd Cnty. High Sch. Gay Straight Alliance v. Bd. of Educ. of Boyd Cnty.*, 258 F. Supp. 2d 667 (E.D. Ky. 2003); *Franklin Cent. Gay-Straight Alliance v. Franklin Township Cmty. Sch. Corp.*, No. IP01-1518, 2002 WL 32097530 (S.D. Ind. Aug. 30, 2002); *Colin v. Orange Unified Sch. Dist.*, 83 F. Supp. 2d 1135, 1148 (C.D. Cal. 2000); *E. High Gay-Straight Alliance v. Bd. of Educ. of Salt Lake City Sch. Dist.*, 81 F. Supp. 2d 1166 (D. Utah 1999).

Colin v. Orange Unified Sch. Dist., 83 F. Supp. 2d 1135, 1148 (C.D. Cal. 2000). Silencing ideas because some people do not like them is not only incompatible with the educational values of open inquiry and wide-ranging debate that are central to our free political system – it is against the law.

Our understanding is that Kathleen High School has numerous noncurricular clubs. For instance, the school website lists “Be Real About God (BRAG),” the Criminal Justice club, Fellowship of Christian Athletes, Future Farmers of America, Skills USA, and Team K-Leen. Because these clubs are noncurricular, the school must provide equal treatment to all noncurricular clubs – including the GSA – pursuant to the Equal Access Act.

Allowing the proposed GSA to form is not just a legal duty, but it would also be beneficial to the school community. It is well documented that LGBT students face significant bullying, violence, and isolation in schools.³ Some of the most common epithets that teens use today to disparage each other are “faggot,” “dyke,” and “queer”; in other words, the school community equates “gay” with “bad.” GSAs are part of the solution. A recent national survey on school safety found that the presence of a GSA at a school significantly reduces the amount of bullying experienced by LGBT students and makes them feel safer.⁴ As one federal judge wrote in a GSA case, “[t]his injunction [to allow the GSA to form] is not just about student pursuit of ideas and tolerance for diverse viewpoints. As any concerned parent would understand, this case may involve the protection of life itself.” *Colin*, 83 F. Supp. 2d at 1150.

The benefits of having a GSA on campus do not flow only to LGBT students. A disproportionate amount of physical violence against LGBT people of all ages is perpetrated by teenage boys. Creating an atmosphere in which bullying and violence are not tolerated and everyone is valued and respected will help make all students better citizens and better equipped for participation in the workforce, which is comprised of people from all walks of life.

By protecting students’ right to form a GSA, you are not only obeying the law and avoiding potential legal liability, you are promoting school safety and

³ See Gay, Lesbian & Straight Education Network (GLSEN), The 2011 National School Climate Survey, available at http://www.glsen.org/binary-data/GLSEN_ATTACHMENTS/file/000/002/2105-1.pdf (finding that more than 80% of LGBT students experienced harassment at school and nearly two-thirds felt unsafe).

⁴ See note 3, *supra*.

helping address the serious problem of anti-LGBT bullying. Given the legal obligation to provide equal access and the perfectly appropriate subject matter of the proposed GSA, we expect this situation can be resolved quickly.

Please advise us by **Monday, April 29, 2013**, that the request to form a GSA at Kathleen High School has been approved and that it may immediately begin having meetings and activities as an approved noncurricular student club.

Sincerely,

A handwritten signature in blue ink that reads "Randall C. Marshall".

Randall Marshall